

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	

COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”),¹ by counsel, hereby provides comments in response to the Public Notice announcing Centennial Communications Corp.’s (“Centennial”) Petition for Waiver of the December 31, 2008, deadline for submitting changes to March 2008 high-cost cap data.² For the reasons set forth below, RCA supports Centennial’s Petition.

I. INTRODUCTION

Like Centennial, several of RCA’s members have seen significant support reductions as a result of the competitive ETC (“CETC”) cap and Interstate Access Support (“IAS”) adjustment,

¹ RCA is an association representing the interests of nearly 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation and licensed to serve over 75 percent of the country. Most of RCA’s members serve fewer than 500,000 customers. Several of RCA’s members have received eligible telecommunications carrier (“ETC”) status and are currently receiving high-cost support in numerous states, including Wisconsin, Nebraska, Oklahoma, Illinois, North Carolina, Wyoming, Montana, Texas, Iowa, Missouri, Kansas, Mississippi, Alabama, and Kentucky.

² See *Comment Sought on the Petition of Centennial Communications Corp. and its Subsidiaries to Waive the December 31, 2008 Deadline for Submitting Changes to Interim High Cost Cap Data*, WC Docket No. 05-337, CC Docket No. 96-45, FCC Public Notice, DA 09-626 (rel. Mar. 19, 2009).

having had support reduced by as much as 87%.³ Also, like Centennial, RCA is deeply concerned by the lack of transparency in the way the CETC cap has been administered. RCA agrees with Centennial that the FCC's Public Notice soliciting changes to March 2008 cap information ("Cap Notice")⁴ did not provide carriers with adequate means to ensure that their March 2008 capped support was calculated correctly. Similarly, despite numerous inquiries, neither the FCC nor Universal Service Administrative Company ("USAC") has provided adequate resources for carriers to determine whether the *uncapped* support used to calculate the cap reduction factor for a given state in a particular quarter is being calculated correctly. This lack of information has nothing to do with carrier confidentiality: USAC has merely cited workload concerns in refusing to provide a list of amounts of support for which all CETCs in a given state were eligible to receive in a given state prior to the application of the cap. Yet, without this information, a CETC can only guess at the amount by which its support should properly be reduced in accordance with the *Interim Cap Order*.⁵

Because USAC and the FCC have yet to provide adequate means for CETCs to verify the amount by which their support should be capped, RCA supports Centennial's Petition.

³ Reduction percentages are based on multi-state spreadsheet detailing state cap factors and IAS cap factor applied to January 2009 support. The spreadsheet is attached as Exhibit A.

⁴ See *March 2008 Capped Universal Service High-Cost Support for Competitive Eligible Telecommunications Carriers*, WC Docket No. 05-337, CC Docket No. 96-45, FCC Public Notice, DA 08-2684 (rel. Dec. 10, 2008).

⁵ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, 23 FCC Rcd. 8834 (rel. May 1, 2008) ("*Interim Cap Order*").

II. THE COMMISSION SHOULD WAIVE THE DECEMBER 31, 2008 DEADLINE FOR ALL CETCS TO SUBMIT CHANGES OR CORRECTIONS AFFECTING MARCH 2008 BASELINE SUPPORT

RCA supports Centennial's request for a waiver of the December 31, 2008, deadline for submitting changes affecting March 2008 base period support. Because RCA's members and other CETCs are similarly impacted by the lack of adequate cap information, RCA urges the Commission to extend the waiver to all CETCs potentially affected by the cap.

A. The Commission Should Clarify That There Is No Time Limitation on CETC Corrections to March 2008 Baseline Support Resulting From Errors Made by USAC, Incumbent ETCs or Competitive ETCs.

In the Cap Notice, the Commission established a deadline of December 31, 2008, for CETCs to submit "changes . . . regarding the data on which their March 2008 high-cost support is based[.]" Centennial correctly notes that the Cap Notice was unclear about what sort of "changes" were subject to this deadline. Did it only apply to line count revisions that would result in changes to the support paid to the CETC in March 2008? Or did it apply more broadly to any change or correction that would change the baseline support within a given state?

Logically, the deadline should apply only to corrections of a CETC's own line count submissions or other information that is necessarily within the CETC's knowledge. Although USAC already imposes a two-year limitation on line count revisions, it is appropriate for USAC and the FCC to establish a special deadline for line count revisions and other changes affecting March 2008 support. As the Commission emphasized in its Cap Notice, a deadline on such revisions would help lend predictability to the operation of the cap.

However, based on discussions with USAC, it is apparent that USAC follows the latter interpretation – that is, CETCs only had until December 31, 2008, to inform USAC of any corrections affecting March 2008 support, even if the CETC uncovered an error made by USAC or another ETC. For example, USAC might erroneously treat certain areas as ‘ineligible’ for a CETC. In such a case, that CETC’s March 2008 support – and, therefore, the total statewide baseline cap amount – would be too low. Under USAC’s interpretation of the Cap Notice, no adjustment would be made to the March 2008 baseline unless the CETC discovered USAC’s error and informed USAC by December 31, 2008.

It is unfair to impose a deadline on CETCs to make corrections to information that was not a result of their own error and that is not necessarily within their knowledge. While it is reasonable to limit the time within which a CETC can make corrections to its own submissions, CETCs should not be punished for errors committed by other parties and over which the CETCs had no control. Accordingly, RCA urges the Commission to clarify that the December 31, 2008, deadline applies only to corrections of a CETC’s own line counts or other submissions affecting March 2008 support.

In some cases, USAC has exercised discretion and agreed to accept corrections involving errors by USAC. Nonetheless, it is critical that the Commission clarify the matter so that all carriers can be certain of their ability to submit information affecting the base cap amount.

B. The Commission Should Prohibit Downward Adjustments to the March 2008 Cap Baseline in Connection With Inaccurate or Late-Filed ILEC Data.

In addition to corrections to erroneous USAC listings, the March 2008 cap baseline might also be affected by inaccurate or late-filed line counts or cost filings made by Incumbent Local Exchange Carriers (“ILECs”). As with USAC errors, these factors are entirely out of the control of CETCs, who might never become aware of the changes until their support is actually adjusted. Also, as Centennial notes, this problem is further compounded by USAC’s apparent practice of accepting late-filed ILEC cost data.

Because CETCs cannot predict or prevent erroneous or late-filed line count or cost submissions by ILECs, CETCs should not suffer the consequences if such submissions further exacerbate the impact of the cap on their support. Accordingly, RCA concurs with Centennial that inaccurate or late-filed ILEC submissions should not result in downward revisions to capped CETC support.

III. THE COMMISSION MUST PROVIDE MORE TRANSPARENCY IN THE OPERATION OF THE CAP

Although the *Interim Cap Order* was relatively clear regarding the operation of the CETC cap, the actual implementation of the cap has been characterized by a remarkable lack of transparency. This lack of transparency harms CETCs by unfairly depriving them of the means to verify whether they are being subjected to the correct cap reduction.

The *Interim Cap Order* describes the operation of the cap as follows:

Under the state-based cap, support will be calculated using a two-step approach. First, on a quarterly basis, the Universal Service Administrative Company (USAC) will calculate the support each competitive ETC would have received

under the existing (uncapped) per-line identical support rule, and sum these amounts by state. Second, USAC will calculate a state reduction factor to reduce this amount to the competitive ETC cap amount. Specifically, USAC will compare the total amount of uncapped support to the cap amount for each state. Where the total state uncapped support is greater than the available state cap support amount, USAC will divide the state cap support amount by the total state uncapped amount to yield the state reduction factor. USAC will then apply the state-specific reduction factor to the uncapped amount for each competitive ETC within the state to arrive at the capped level of high-cost support. Where the state uncapped support is less than the available state capped support amount, no reduction will be required.⁶

In order for a CETC to determine how much its support in a given state in a given quarter will be reduced, it needs two pieces of information: (1) the total amount of support CETCs in that state were eligible to receive in March 2008; and (2) the total amount of support CETCs in that state are eligible to receive, pre-cap, for the calendar quarter in question. In both cases, it is critical for the CETC to have a carrier-by-carrier breakdown of the support CETCs are eligible to receive during the quarter at issue.

As discussed in Section II above, the Cap Notice did not provide adequate information to enable CETCs to verify whether the published base cap amounts required corrections beyond any line count revisions they may need to make themselves. Just as opaque is the second part of the equation, support for which CETCs in a given state are eligible prior to the application of the cap.

There is no publicly available resource for CETCs to learn how much support each CETC in a given state is, or was, eligible to receive. CETCs cannot rely on USAC's projections for this information, because projections often vary significantly from the support for which a carrier is

⁶ *Interim Cap Order*, *supra*, 23 FCC Rcd. at 8834, 8846, ¶ 27.

ultimately eligible.⁷ Additionally, USAC's projections include support for all reported CETC lines, even if the reporting carrier has not yet been designated or is reporting some lines in areas for which it is not eligible for support. Conversely, a CETC whose eligibility is pending at the time USAC releases its projections – or who did not file lines prior to its designation and therefore was not even listed in the projections – may become eligible before the disbursement month in question.

Nor can a CETC rely on USAC's published disbursement data. That information does not necessarily represent the amount for which a given carrier was entitled to receive, because disbursements often include "true-ups" and other adjustments to support from prior periods.

It is precisely because the existing public resources cannot be relied on that USAC and the FCC issued the Cap Notice and sought comment on a newly available listing of eligible support by individual CETC for March 2008. Yet, no such listings have been made available with respect to the time periods in which the cap is actually being applied.

While USAC has been responsive to questions about the operation of the cap, USAC has declined to provide comprehensive eligibility information that would enable a CETC to verify the total uncapped support that was used in calculating the cap factor for a given state. Instead, USAC has limited its provision of information to the support eligibility data for the individual CETC making the information request. This limited response is inadequate for the CETC's purposes because it does not enable the CETC to verify the entire statewide uncapped amount.

⁷ For example, a CETC that late-filed a Rural Use Certification may be listed as eligible for payment in a given quarter, even though the payment will not actually be authorized due to the late filing.

There is no legitimate basis for withholding from the public the amounts of support which all CETCs in a given state are eligible to receive in a particular month or quarter. In response to undersigned counsel's inquiry as to the reasons, USAC staff at first stated that the information could not be provided because of confidentiality concerns. When undersigned counsel explained that there was nothing confidential involved in providing the actual amounts CETCs are entitled to be paid, USAC staff explained that the information still could not be provided because the task would be labor-intensive and USAC lacks the resources to assemble and publish the information regularly.

Actual, comprehensive CETC eligibility data is critical for CETCs to determine whether cap reductions are being calculated properly. Given that USAC already calculates the support owed to each CETC in a given quarter before it makes prior-period adjustments and cap reductions, USAC should not find it burdensome to disclose this critical information to the public. Accordingly, RCA urges the Commission to instruct USAC to publish actual uncapped support amounts – net of prior-period adjustments – used in calculating the state cap factors and nationwide IAS adjustment factor for each quarter.

IV. THE COMMISSION SHOULD PROMPTLY RULE THAT LATE-FILED CERTIFICATIONS OR LINE COUNTS REQUIRING WAIVERS DO NOT NEGATIVELY IMPACT THE CAP

In some states, the task of determining the correct statewide cap reduction is complicated by the existence of outstanding requests for a waiver of certain deadlines that may affect the total amount of CETC support in that state in March 2008. A waiver that entitles a CETC to the support for which it was eligible during the first quarter of 2008 would necessarily affect the

March 2008 base cap period. However, given the December 31, 2008, deadline established in the Cap Notice, it is unclear whether a waiver would indeed result in an adjustment to the base cap amount. RCA submits that it should result in such an adjustment.

As explained by the Commission, the interim CETC cap “limits the annual amount of high-cost support that competitive ETCs can receive in the interim period for each state to the amount competitive ETCs were *eligible* to receive in that state during March 2008, on an annualized basis.”⁸ In the *Interim Cap Order*, the Commission pointed to the clear statutory distinction between a carrier being “eligible” for support and actually being “entitled” to receive support.⁹ The Commission went on to explain that “Congress distinguished between those who are merely ‘eligible’ to receive support and those who are ‘entitled’ to receive benefits.” *Id.* The statutory language in question is found within 47 U.S.C. Section 254(e):

...[O]nly an eligible telecommunications carrier designated under section 214(e) of this title shall be *eligible* to receive specific Federal universal service support. A carrier that *receives* such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

The foregoing language from the statute and the *Interim Cap Order* makes clear that being “eligible” for high-cost support is something less than being entitled to “receive” such support. A carrier may have been “eligible” for support in March 2008, only to have the support withheld because of, *e.g.*, late-filed line counts or certifications. Those amounts, though unpaid during the disbursement period in question, should be included within the CETC cap as support

⁸ *Interim Cap Order*, *supra*, at 8837, ¶ 7 (emphasis added).

⁹ *Id.* at ¶ 29 (“...designation as an ETC does not automatically entitle a carrier to receive universal service support.”)

for which the CETC was “eligible.” Excluding the support would artificially suppress CETC support at levels below the support for which CETCs were eligible in March 2008, contrary to the language of the *Interim Cap Order*.

RCA therefore requests that the Commission instruct USAC, in the event of a waiver grant entitling a CETC to forgone support from March 2008, to include amounts within “the amount competitive ETCs were *eligible* to receive” in March 2008.

V. CONCLUSION

For the reasons set forth above, RCA urges the Commission to grant Centennial’s Petition.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

A handwritten signature in black ink, appearing to read "Todd B. Lantor".

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EXHIBIT A

February 2009 Cap Factors

State_Cd	State_Cap_Factor	IAS_Cap_Factor
AK	1.0000	0.8594
AL	0.4386	0.8594
AZ	1.0000	0.8594
CA	1.0000	0.8594
CO	0.9785	0.8594
IA	0.8779	0.8594
ID	0.6902	0.8594
IL	0.9281	0.8594
KS	0.8436	0.8594
KY	0.9486	0.8594
LA	0.9631	0.8594
ME	1.0000	0.8594
MO	0.9346	0.8594
MS	0.9486	0.8594
MT	0.7332	0.8594
NC	0.3649	0.8594
ND	0.8317	0.8594
NE	0.9529	0.8594
NH	0.1289	0.8594
NM	0.6294	0.8594
NV	1.0000	0.8594
NY	0.5363	0.8594
OK	1.0000	0.8594
OR	0.9482	0.8594
SD	0.8744	0.8594
TN	0.2814	0.8594
TX	0.8736	0.8594
UT	1.0000	0.8594
VA	0.6847	0.8594
VI	0.9306	0.8594
VT	0.0000	0.8594
WI	0.8334	0.8594
WV	1.0000	0.8594
WY	0.9424	0.8594